Sic iddle Sawyer Limited a deemed Public Ltd. Vs Chemical Employees Union and Shri T.M. Mantri Member, Industrial Tribunal

Court: Bombay High Court

Date of Decision: March 31, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226

Hon'ble Judges: Nishita Mhatre, J

Bench: Single Bench

Advocate: P.K. Rele, Vinod Tavade and R.P. Rele, i./b., Piyush Shah, for the Appellant; C.U. Singh and A. Shaikh, i./b., Sanjay Udeshi and Co., for the Respondent

Judgement

Nishita Mhatre, J.
By this petition, the Petitioners impugns the award of the Industrial Tribunal dated 29.1.1999 in Reference (TT) No. 31

of 1999. This award is in respect of general demands such as payscales to be paid, classification, service increments, Dearness Allowances,

Leave, etc. payable to the workmen employed in the Administrative section of the Petitioner-Company and the workmen employed in the factory.

The Award has been principally assailed on the ground that the Tribunal has committed an error by not considering the principles as delineated by

the Apex Court in the matter of wage fixation and that while considering the demands of the workmen, the Tribunal has ignored the principle of

industry cum region and has not considered the total wage packet which would be payable to the workmen. The other contention raised on behalf

of the Petitioner is that the Award has been made applicable from the date of the demand, that is, January 1994 and this has caused a tremendous

burden on the Petitioner and that, therefore, the Award is required to be quashed.

2. The facts giving rise to the present petition are as follows:

A settlement was entered into between the Petitioner and the Respondent-Union on 14.7.1990 which was to be in operation for a period of three

years. This settlement expired on 31.12.1993 and the Union raised a fresh charter of demands on 5.1.1994. Since no settlement was arrived at,

contrary to the usual practice of having a general demands settled between the parties inter se, the Union field a complaint under Item 5 of

Schedule II against the Petitioner for refusing to bargain in good faith with the Union. The Industrial Court allowed the complaint on 5.11.1996.

Being aggrieved by this order, the Petitioner challenged the order in this Court by filing Writ Petition No. 102 of 1997. Although the order of the

Industrial Court was set aside, this Court directed the appropriate government to make two separate reference for adjudication before the same

Tribunal since there were demands raised by the Union as well as the Petitioner Company. Acting on these directions, a common reference was

made on 31.3.1997 being Reference (TT) No. 31 of 1997. Evidence was led before the Industrial Tribunal. Documentary evidence in the form of

information obtained from comparable concerns was also filed before the Tribunal by both the parties. According to the Petitioner, four concerns

were comparable with the Petitioner, namely, M/s. Bio-Chem Pharmaceutical Industry Ltd., M/s. Bharat Serums & Vaccines Pvt. Ltd., M/s. Mac

Laboratories Pvt. Ltd., M/s. Khandelwal Laboratories Ltd. The Petitioner filed a statement showing how the service conditions in these concerns

were comparable to the situation prevalent in the Petitioner''s concern in respect of the demands raised by the Union. The Union, on the other

hand, filed a comparable statement of 10 companies including that of Glaxo India Limited and Duphar Interfran Ltd. It would not be out of place to

mention at the juncture that Glaxo India Ltd. took over the Petitioner-Company in January, 1997, that is, before their Reference was made.

However, for the purposes of the pending dispute, it was shown as a separate entity and Glaxo India Ltd. held 100% shares of the Petitioner

company. Evidence of some workmen was recorded on behalf of the Respondent-Union. The Respondent-Union also recorded the evidence of

the personnel executive of Duphar Interfran Ltd. as, according to the Union, this was a concern which was very similar to the Petitioner''s concern

and, therefore, it was their contention that the conditions of the service of Duphar Interfran Ltd. (which in any event were less than what was

demanded) should be granted to them. The Petitioner examined three witnesses from the concerns which according to them were comparable in

order to bring on record the conditions of service prevalent in those companies. After assessing the entire record including both oral and

documentary evidence, the Tribunal made an award on 29.1.1999. The Tribunal allowed some of the demands while rejecting the others. The

Tribunal awarded a revision in the basic scale of pay, Dearness Allowance, Acting allowance, annual increments and certain other allowances

while rejecting the demands of provident fund, classification, service increments, leave, bonus, accident compensation, internal promotions, leave

bank, etc. as also certain allowances. The Tribunal also directed that the award was effective retrospectively from 1.1.1994 and the Petitioner was

directed to pay arrears within four months.

3. Being aggrieved by this award, the Petitioner impugned the same in the present Writ Petition. At the time of admission of the petition, the prayer

made by the Petitioner for staying the award was rejected. While doing so, this Court directed the Petitioner to apply the arrears in two

installments within six months from the date when the Petition was admitted. This order was challenged by the Petitioner in appeal No. 854 of

1999 when the Division Bench directed the Petitioner to make payment of 50% of the amounts of arrears in terms of the impugned order of the

Industrial Tribunal and to give a bank guarantee for the remaining 50%. The Petitioner has complied with these orders.

4. Mr. Rele, learned Counsel for the Petitioner, has, in my opinion, raised a very technical issue. He contends that there is no doubt that the

Petitioner has financial capability of bearing the burden cast upon it by the award of the Tribunal. He further contends that there is also no dispute

that there has been an increase in the cost of living index from the date when the period of the last settlement expired to the date when the present

award was made. he does not dispute that there has been a practice in the Petitioner-Company to have the conditions or service of the workmen

revised every three years by settlement and that from 1993 when the last settlement expired till 1997, there had been no wage revision in the

Petitioner Company. He submits that the existence of any or all these criteria may be good enough reason for a wage rise to the workmen. But

such a wage rise has to be awarded in accordance with the principles of industrial adjudication and wage fixation as laid down by the Apex Court

in various judgments. The learned Counsel urges that assuming all the three criteria are present in this case it was incumbent on the Tribunal to

consider the industry-cum-region formula as set out in various judgments of the Supreme Court and also to consider the total wage packet which

the workmen would draw as a result of the revision in wages. According to the learned Counsel, there is no justification for awarding a wage rise

with retrospective effect from 1.1.1994 when yearly increments were paid to the workmen and variable Dearness Allowance was also paid to the

workmen. He submits that this payment which was made has taken care of the gap in their wages from 1993 to 1997 and, therefore, making the

award retrospectively applicable was illegal.

5. The learned Counsel relies on the judgments of the Apex Court in the case of Polychem Limited Vs. R.D. Tulpule, Industrial Tribunal, Bombay

and Another, in support of his contention that the total wage packet must always be considered before any wage revision is effected by the

Tribunal. He further relies on the cases of French Motor Car Co., Limited Vs. Workmen, , Greaves Cotton and Co. and Others Vs. Their

Workmen, , Remington Rand of India Ltd. Vs. The Workmen, and Hindustan Lever Ltd. v. B.N. Dongre reported in 1995 L I.C. 1136 to

buttress his argument that an industrial adjudicator must necessarily decide the wage reference on the basis of industry cum region principle even

assuming that the employer has a financial capacity to bear the burden which could be cast on it if the demands of the workmen are met. He further

submits that the grant of certain allowances by the Tribunal is also wholly illegal especially when the washing allowance has been granted to the

administration staff when no such demand was made on their behalf.

6. Per contract, it was urged by Mr. C.U. Singh, learned Counsel appearing on behalf of the Respondent-Union, that the plea raised by the

Petitioner is hypertechnical and there is nothing brought on record by the Petitioner to show that the concerns, which according to the Union, were

similar to the Petitioner were in fact not comparable. He submits that the Union had discharged its burden by producing the material on record

which indicated that certain establishments were comparable including Duphar Interfran Ltd. He further submits that in any event, Glaxo India Ltd.

will have to be considered as a comparable concern in view of the fact that the Petitioner is a wholly owned subsidiary concern of Glaxo India Ltd.

from January, 1997. The learned Counsel submits that besides attacking the award for its apparent failure to consider the principle of industry-

cum-region, the Petitioner has not been able to substantiate its claim that in fact such concerns which it relied on as comparable were indeed

comparable to the Petitioner''s concern. He submits that the medical representatives employed by the Petitioner were given two wage revisions

during the pendency of the present reference. Similarly, the Executive Directors of the Company also were paid handsome amounts in the form of

revision of salaries and dividends during the pendency of the reference.

7. The learned Counsel relies on the judgments of the Apex Court in the cases of Kamani Metals and Alloys Ltd. Vs. Their Workmen, ,

Karamchand Thapar and Brothers (P) Ltd. Vs. Their Workmen, , The Hindustan Times Ltd., New Delhi Vs. Their Workmen, as also the

judgments of this Court in Glaxo India Ltd. v. Chemical Employees'' Union and Ors. reported in 1998 2 CLR 54 and Blue Star Ltd. v. All India

Blue Star Employees Federation and Anr., etc. (Writ Petition Nos. 2093, 2094 and 2095 of 1996 decided on 9.12.1996). The learned Counsel

submits that time and again, the Courts have taken the view that the very fact that there has been steep rise in the cost of living index which was not

commensurate with the wages being paid to the workmen would justify an increase in wages. He further submits that as long as the finding of the

Tribunal was not perverse or illegal, it had to be upheld under Article 226 of the Constitution of India since it was an expert body deciding wage

fixation and the same could not be set aside merely on account of a technical plea raised by the Petitioner. The Tribunal has, according to the

learned Counsel, considered the statements filed by both the parties before it in respect of the comparable concerns and has come to the

conclusion that the concerns on which the Petitioner relied were not comparable with Petitioner''s undertaking. The Tribunal has instead accepted

that Duphar Interfran Ltd. was a comparable concern and has, accordingly, awarded the revision which is even less than what the workmen had

demanded. He further urges that even after making provision for Voluntary Retirement Scheme, the profits of the company had not reduced

substantially and, therefore, the respondent Union was entitled to appropriate revision in the payscales, Dearness Allowance and other allowances.

8. I have heard both the parties at length since an important question is raised as to whether it necessary that in every case of wage fixation, the

principle of industry cum region must be borne in mind before adjudicating the wages payable to the workmen. Is it incumbent on the Industrial

Tribunal to consider this principle although an employer can bear the financial burden cast upon it if higher wages and allowances are paid to the

workmen, especially when the consumer price index has soared substantially?

9. In the case of French Motor car (supra), the Apex Court took the view that it is necessary to consider similar concerns while fixing the wages in

the same industry and same region. It has been held thus:

The main contention on behalf of the appellant is that wages are fixed on industry-cum-region basis and the tribunal went wrong when it took into

account for comparison industrial concerns which were entirely dissimilar to the appellant''s. It is now well settled that the principle of industry-

cum-region has to be applied by an industrial court, when it proceeds to consider questions like wage-structure, dearness allowance and similar

conditions of service. In applying that principle industrial courts have to compare wage-scale prevailing in similar concerns in the region with which

it is dealing, and generally speaking, similar concerns would be those in the same line of business as the concern with respect to which the dispute is

under respect to which the dispute is under consideration. Further, even in the same line of business, it would not be proper to compare (for

example) a small struggling concern with a large flourishing concern, in Williamsons (India) (Private) Ltd. v. the workmen 1962 I L.L.J. 302 this

Court had to consider this aspect of the matter, where Williamsons (Private) Ltd., was compared by the tribunal with Gillianders Arbuthnot and

Company for purposes of wage fixation, and it was observed that the extent of the business carried on by the concerns, the capital invested by

them, the profits made by them, the nature of the business carried on by them, there standing, the strength of their labour force, the presence of

absence to the extent of reserves, the dividends declared by them and the prospects about the future of their business and other relevant factors

have to be borne in mind for the purpose of comparison. These observations were made to show how comparison should be made, evening the

same line of business and were intended to lay down that a small concern cannot be compared even in the same line of business with a large

concern. Thus where there is a large disparity between the two concerns in the same business, it would not be safe to fix the same wage structure

as in the large concerns without any other consideration. The question whether there is a large disparity between two concerns is, however, always

a question of fact and it is not necessary for the purposes of comparison that the two concerns must be exactly equal in all respects. All that he

tribunal has to see is that the disparity is not so large as to make the comparison unreal. In Novex Dry Cleaners v. Workmen 1967-I LLJ 271 this

court pointed out that it would not be safe to compare a comparatively small concern with a large concern in the same line of business and impose

a wage-structure prevailing in the large concern as a rule of thumb without consideration the standing, the extent of labour force, the extent of

business and the extent of profits made by the two concerns over a number of years.

The contention on behalf of the appellant is that in fixing the wage-structure for workshop employees in particular, the tribunal has taken into

account for purposes of comparison concerns which are in a different line of business altogether and which are also very much bigger concerns

than the appellant company. There is in our opinion force in this contention. In dealing with the workshop employees, the tribunal has taken into

account wages prevalent in concerns like Greaves Cotton and Dumex, which are very much larger concerns than the appellant company and which

are also not in the same line of business. It is obvious that the fixing of wage-scales for workshop employees made by the tribunal has been

affected by taking info account these concerns, and to that extent the award cannot be upheld. At the same time it appears that the appellant

company is practically paying the highest wage scales in the particular line of business in which it is engaged, and it is urged on its behalf that if it is

compared with concerns in its own line of business. We are of opinion that this argument cannot be accepted, for it would then mean that if a

concern is paying the highest wages in a particular line of business, there can be no increase in wages in that concern whatever may be the

economic conditions prevailing at the time of dispute. It seems to us, therefore, that where a concern is paying the highest wages in a particular line

of business, there should be greater emphasis on the region part of the industry-cum-region principle, though it would be the duty of the industrial

court to see that for purposes of comparison such other industries in the region are taken into account as are as nearly similar to the concern before

it as possible. Though, therefore, in a case where a particular concern is already paying the highest wages in its own line of business, the industrial

courts would be justified in looking at wages paid in that region in other lines of business, it should take care to see that the concerns from other

lines of business taken into account are such as are as nearly similar as possible, to the line of business carried on by the concern before it. It

should also take care to see that such concerns are not so disproportionately large as to afford no proper basis for comparison. .....

10. While considering the case of the workmen in Greaves Cotton & Co. (supra), the Apex Court has held that where in any industry, the

comparable concerns are not available as the establishment is by far the largest in the industry in that region part of the principle ""industry cum

region"" has to be considered and concerns manufacturing allied products in that region can be assessed as comparable. In the case of Hindustan

Lever (supra), the Apex Court observed that merely because the financial position of the company is sound, an upward wage revision would not

necessarily be justified if it was an irresponsible revision as it would create ripples else where and disturb the wage structure in the region.

However, in para 74 of the judgment, it was held thus:

74. Next, we have pointed out earlier the relation between wages and prices of food, clothing and other necessities of life which even the lowest

wage earner purchases month after month. If the prices of these commodities rise and the basic wage remains constant, real wage actually falls

creating a problem for survival for the lowest wage earner. And it is common knowledge that this frequently happens during periods of inflation as

is reflected from how rapidly the index rose form 313 points in 1950 to 6229 points by August 1993. To prevent the real wages from falling with

the rise in CPI, some allowance had to be paid to the workers which gave rise to the introduction of the dearness allowance scheme. Besides, it

must be realised that the protection against price rise is limited to only those items included in the basket and not to all items which a wage earner at

the lowest level consumes. For those items not included in the basket, the wage earner at every level has to bear the brunt of inflation. It must also

be remembered that while dietary habits change, the food items in the basket remain constant for want of periodical revision with the result that the

new items of food which are highly priced do not count for neutralisation. Again wage revisions do not take place for long spells. In certain wage

plans upward revision of wages take place by the merger of a portion of the dearness allowance in the basic wage plus an addition thereto to take

care of the inflationary dents in the wage structure in respect of other items outside the basket. Under certain dearness allowance scheme,

neutralisation is allowed on tapering percentages on the assumption, that those in the higher wage groups have a certain cushion to bear a part of

the inflation. Such a scheme is in vogue in Central and State Government servant''s salary plans. That cushion does not remain static and gets

depleted as the prices rise and there comes a time when it becomes necessary to inflate it once again by an upward revision of the salary structure.

But in certain industries merger of dearness allowance in the basic wage does not take place at all as in the present case and instead periodically

increases are allowed in the basic wage to nullify the adverse effect of inflation on items outside the basket. It must, however, be remembered that

in the case of employees belonging to high wage islands, their carry home pay packets shrink on account of deduction of income tax at source.

11. Therefore, on an analysis of the conspectus of judgments cited before me, the principle of ""industry cum region"" would have to be considered

in wage adjudication before the wages are revised in order to award fair wages or living wages. However, applying this principle in the present

case, I see no reason to interfere with the award because the Tribunal has considered the same and the contention raised on behalf of the Petitioner

is not substantiated. After going through the evidence brought on record by the Petitioner in the form of comparative charts, the Industrial Tribunal

has found that none of the concerns which the Petitioner claimed were comparable were in fact similar to the Petitioner''s establishment. According

to the Tribunal, the demands raised by the Petitioner were not justified and while rejecting the same has considered the comparable concerns. The

Tribunal has found that no attempt was made by the Petitioner Company to bring cogent material on record to indicate that the adjudication should

be based on the industry cum region principle. The Petitioner did not examine any of its officers before the Industrial Tribunal but only

representatives from Khandelwal Laboratories Ltd. Mac Laboratories Pvt. Ltd. and Bio Chem Pharmaceutical Industries Ltd. which were three of

the four concerns found comparable by the Petitioner. The Tribunal correctly assessed the pleadings and relevant evidence and held that the

comparable concerns relied upon by the Petitioner are not in fact comparable as the Chart filed before the Industrial Tribunal would show. In fact

the witnesses examined by the petitioner did not take its case any further. Therefore, the Tribunal has justifiably concluded that such industries

could not be considered to be comparable.

12. In any event, what has been granted by the Tribunal is less than what the management of Bio-Chem Pharmaceutical Ltd. (which according to

the Petitioner is a comparable concern) were paying their workmen. It would not, therefore, be proper to entertain the grievance made by the

Petitioner as the Tribunal has given something less than what was demanded as also less than what was being paid in Bio-Chem Pharmaceutical

Ltd.

13. The submission of the learned Counsel for the Petitioner that the concerns which are comparable have not been taken into account by the

Tribunal has also not been substantiated. The Tribunal has awarded conditions of service which are comparable to those in Duphar Interfran Ltd.

Although there is no positive finding that it is a comparable concern, a reading of the award as a whole will show that the Tribunal has not

transgressed the parameters laid down by the Apex Court for wage fixation. The insistence by the learned Counsel for the Petitioner that the award

should be set aside as the Tribunal has failed to bear in mind the principle of industry cum region, also is misplaced as in this case, the Tribunal has

in fact considered it and has come to the conclusion that the concerns relied upon by the Petitioner were not comparable. According to the learned

Counsel for the Petitioner, there must be a positive finding that a particular concern is a comparative concern and this not having been given by the

Tribunal, the award is bad. The Tribunal could possibly have written a better award, naming exactly which establishments were, in its opinion,

comparable with the Petitioner. But this factor by itself is not a sufficient ground for setting aside the award if there has been substantial compliance

of law while passing the award and there is no miscarriage of justice.

14. In Kamani Metals and Alloys Ltd. (supra), the Apex Court has considered the fact that the aim of the adjudicators should be to give the

workmen living wages which is the goal to be achieved. A fair wage is related to the earning capacity and the workload. This is not the living wage

by which it is sufficient to provide not only the essentials but a fair measure of frugal comfort with an ability to provide for old age and evil days.

The Apex Court has held thus:

The company contends that many of the matters here stated have not been considered and the award being defective for that reason deserves to

be set aside. This is not a proper approach. The observations no doubt lay down the principal guidelines but they are not intended to operate with

the rigidity of a statutory enactment. The Court has indicated what discovery of correct date for the fixation of fair wages in the sense explained

above. In this task all the relevant considerations must enter but fruitless inquiries into matters of no particular importance to a case are hardly to be

insisted upon because rather than prove of assistance, they might well frustrate the very object in view. Each case requires to be considered on its

own facts. In the case before us, all relevant circumstances have, in our opinion, entered the determination, and it has not been shown to us that

any other circumstance could or should have been considered. In fact the argument was that the tribunal considered some irrelevant things and this

has vitiated the finding...

15. The contentions raised on behalf of the Petitioner are similar to those raised before the Apex Court in the case of Kamani Metals and Alloys

Ltd. (supra). While considering the application of the principle of industry cum region, the Apex Court has also observed thus:

The next part of the inquiry involved the application of the principle of industry-cum-region. This principle is that fixation or provision of scales of

wages, pays or dearness allowance must not be out of tune with the wages, etc., prevalent in the industry or the region. This is always desirable so

that unfair competition may not result between an establishment and another and diversity in wages in the region may not lead to industrial unrest. In

attempting to compare the unit with another care must be taken that units differently placed or circumstanced are not considered as guides, without

making adequate allowance for the differences. The same is true when the regional levels of wages are considered and compared. In general

words, comparable units may be compared but not units which are dissimilar. While disparity in wages in industrial concerns similarly placed leads

to discontent, attempting to level up wages without making sufficient allowances for differences, leads to hardships.

16. Now if it was the case of the Petitioner that Duphar Interfran Ltd. was not a comparable concern, it was necessary for them to demonstrate

before the Tribunal as to how this concern cannot be compared to the Petitioner concern. Even before me, there was no attempt made to establish

the fact that the two concerns were dissimilar. A perusal of the award would throw light on the fact that the Tribunal has borne the principle of

industry cum region in mind while fixing the wages. The wages fixed by the Tribunal cannot be said to be exorbitant and indeed are less than what

is payable by Bio-Chem Pharmaceutical Ltd. which according to the Petitioner themselves is a comparable concern.

17. In the case of Karamchand Thapar (supra), the Apex Court was considering the case of rates of dearness allowance in which some of the

concerns in that region were paid dearness allowance at the rate envisaged in the Bengal Chamber of Commerce Scheme while others paid at a

different rate. The Apex Court observed thus:

13. All these aspects have been taken into account by the Tribunal in its present award. It has found that there is no evidence placed by the

appellant that its financial position was such that it will not be able to bear the burden of paying dearness allowance at the rate envisaged by the

Bengal Chamber of Commerce Scheme. The witnesses on the side of the appellant have not stated the company"s finances are bad: nor have they

stated that it cannot bear the burden of dearness allowance according to the scheme. If the appellants plea was that it could not pay dearness

allowance according to the scheme, it should have placed material before the Tribunal and satisfied the claim in that regard. The Tribunal has

recorded a finding that the appellant"s financial position is such that it can pay dearness allowance according to the scheme. It is not doubt true that

in the award of dearness allowance the paying capacity of the appellant is a very material factor. The principle is settle that if the paying capacity of

the employer increases or the cost of living shows an upward trend, the industrial employees would be justified in making a claim for the re-

examination of the rates of the dearness allowance. The Tribunal will not be normally justified in rejecting it solely on the ground that enough time

has not passed after the making of the award. The question regarding revision will have to be examined on the merits of each individual case by the

Tribunal concerned. There is a chart Ext. 4, giving the cost of living index for Calcutta from 1947 to 1967 for the various months. When the award

dated November 23, 1965, was passed, it will be seen that the cost of living index was 533 points in November, 1965. It shot up to 597 in

November, 1966 and to 613 in June, 1967, particulars regarding the rest of the months are not available. The present award under consideration

was made on February 1, 1968 and it has also to take effect from that date. Therefore, the cost of living index, which was 533 points in 1965, has

shot up to 613 and this clearly shows that there has been a very steep rise in the price index, which itself will justify a revision of the rate of

dearness allowance as awarded in 1965. No contention regarding the financial ability of the contention regarding the financial ability of the

employer having been seriously raised before the Tribunal or even in the SLP before this Court, it is idle for Mr. Pal to contend that the appellant

cannot bear the additional burden.

18. In my view, it would not be proper to set aside the award merely because the Tribunal has not expressed itself effectively to show that it was

considering the principal of industry cum region as long as the award indicates that this exercise has been undertaken by the Tribunal there is no

need to interfere with the award on this ground. In the case of Hindustan Times Ltd. (supra), the Apex Court was considering the case of

Hindustan Times which was being published from New Delhi. The contention raised on behalf of the present Petitioner that the Tribunal has to

undertake the exercise of considering the comparison between each category of workmen was also raised in that case and the Apex Court while

considering the submission has observed thus:

Equally unacceptable is Mr. Pathak''s next contention that the wage-scale fixed by the tribunal operates unfavorably on this company vis-a-vis

two other concerns in Delhi region, viz., the Times of India, Delhi, and the Statesman, Delhi, We have compared the wage-scales in these two

concerns, viz., the Times of India, Delhi and The Statesman, Delhi, with the wage-scales under the award and have for the purpose of comparison

taken into consideration the dearness allowance as fixed by the tribunal. The comparison shows that while in some cases the company (the

Hindustan Times) will have to pay more to its workmen than what is being paid to workmen of the same category by the Times of India, Delhi and

the Statesman, Delhi, and the Statesman, Delhi, are much smaller units of the newspaper industry than the Hindustan Times. These companies are

mere adjuncts to the Times of India, Bombay, and the Statesman, Calcutta, respectively. Therefore, even if for some categories the wage-scale

under the award is higher than that in the Times of India, Delhi, and the Statesman, Delhi, that would be no ground for modifying the award in

favour of the company. We have therefore, come to the conclusion that there is no ground whatsoever for modifying the wagescale fixed by the

award in favour of the company.

19. The reliance is also placed on behalf of the Respondent-Union on the judgment of the Apex court in the case of Management of Northern

Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another, for the proposition that the Union would be entitled to

support the decision of the Tribunal on grounds which were not accepted by the Tribunal or on a ground which may not have been taken into

consideration by the Tribunal on the face of the record. This judgment has been cited as according to the Respondent-Union, Glaxo India Limited

has taken over the Petitioner-company from January 1997. Therefore, submits the learned Counsel, at least the wage scales and dearness

allowance and other conditions of service prevalent in Glaxo India Limited should be made payable to the Petitioner. He also submits that the

annual reports of the Petitioner-Company for the year ending 31.12.1999 shows a net profit before tax of Rs. 3,35,00,00/- after implementation of

the award. He, therefore, submits that this would indicate that the Petitioner is financially sound and can bear the burden of paying the amount as

claimed by the Respondent-workmen through their Union. However, it is not necessary for me to consider this submission in detail as I am of the

view that the award of the Tribunal does not suffer from any substantial infirmity.

20. The next contention raised on behalf of the Petitioner is that the total wage packet of the workmen has to be considered by the Tribunal before

awarding any amounts. Reliance is placed on the cases of M/s. Polychem Ltd. (supra), Greaves Cotton & Co. (supra) and Remington Rand of

India Ltd. (supra) for the submission that the Tribunal ought to have considered the total wage packet including the basic wages and dearness

allowance and only then he should have awarded any revision in wages. The Apex Court in Greaves Cotton & Co. (supra) observed thus:

It has however been urged that the tribunal overlooked considering what would be the total wage packet including basic wages and dearness

allowance and that has made the total wages (i.e., basic wage and dearness allowance) fixed by the tribunal much higher in the case of the

appellants than in comparable concerns which it took into account. It is true that the tribunal has not specifically considered what the total wage

packet would be on the basis of the scales of wages and dearness allowance fixed by it as it should have done: but considering that wage-scales

fixed are less than the highest in the comparable concerns though more than the lowest, it cannot be said that the total wage packet in the case of

the appellants would be necessarily higher than in the case of the other comparable concerns. This will be clear when we deal with the dearness

allowance which has been fixed by the tribunal, for it will appear that the dearness allowance fixed is more or less on the same lines, i.e., less than

the highest but more than the lowest in other comparable concerns. On this basis it cannot be said that the wage packet fixed in these concerns

would be the highest in the region. Though therefore, the tribunal has not specifically considered this aspect of the matter which it should have done

its decision cannot be successfully assailed on the ground that the total wage packed fixed is the highest in the region.

21. The contention of the learned Counsel for the Petitioner cannot be accepted in view of this observation of the Apex Court. In the case of M/s.

Polychem Ltd. (supra) and Remington (supra), the Apex Court has considered the effect of the total wage packet while adjudicating the wages. In

para 8 of the judgment in M/s. Polychem Ltd. (supra), the Apex court observed thus:

8. Wage policy relating to workmen appears to be a complex and sensitive area of public policy. The reason is plain. The relative status of

workmen in the society, their commitment to industry and their attitude towards the management, their motivation towards productivity and their

standard and way of life, are all conditioned by wages. it is accordingly not a purely economic policy in which the employer and the employee

alone are interested. Besides the worker and the management, the consumer and the society at large, and a fortiori the State, are also vitally

interested, and no wage policy can ever be applied in vacuum in disregard of the realities of the social and economic conditions in our country.

Considering the question of wages in the background of the Directive Principles enshrined in our Constitution a wage structure should serve to

promote a fair remuneration to labour ensuring due social dignity, and strengthen incentives to efficiency, without being unmindful of the legitimate

interest and expectation of the consumer in the matter of prices. Guided by this principle, if the financial capacity of the industry permits, the

workers should, broadly speaking, be allowed their due share in the prosperity of the industry, to which they have contributed by their labour, so

as to enable them, within reasonable limits, to improve their standard of living.

22. Therefore, in my view, it is unreasonable to contend that although the financial capacity is available with the Petitioner to bear the burden cast

by the award, the award must be set aside because according to the Petitioner are principle of industry cum region has not been considered or has

not been considered in the manner laid down by the Apex Court. This is especially so when the wages granted are not higher than the concerns on

which the Petitioner itself placed reliance. The entire attitude adopted by the Petitioner seems to be that the workmen should not get any upward

revision in wages in accordance with the impugned award although the financial capacity is available and there has been a monstrous rise in the cost

of living index. The gap between the last settlement and the present award is also large. In fact, as held in a catena of decisions of the Apex Court,

when there is an erosion in real wages due to inflation or when there is a steep rise in the consumer price index or if the gap between the last wage

fixation and the present one is substantial, an upward revision in wages is justified. There can be no obstacle to granting such a revision, if the

company is in a position to bear the financial burden. Not can such a revision be questioned if it does not lead to distorting existing differentials or

creating a disturbance in the wage structure of the region. The petitioner has failed to demonstrate that the present wage revision has in fact created

such a situation. Therefore, in my view, there is no need to interfere with the award of the Industrial Tribunal.

23. As regards the grievance by the Petitioner that washing allowance was awarded to the workmen in the administrative section although there

was no demand made on their behalf, the learned Counsel for the Respondent Union fairly conceded that they are not insisting on this demand for

the office staff since no demand has been made by them.

24. The contention raised on behalf of the Petitioner that there was no need to grant retrospective effect from 1.1.1994 also must be rejected. It is

submitted that the effect of the settlement of 1990 and the benefits therefrom continued to flow and, therefore, there was no need to grant any

retrospective effect. The Tribunal has considered this aspect and borne in mind the fact that the last settlement was in operation upto 31.12.1993

and that for about a decade there was no fresh settlement or wage revision. The Tribunal has also considered the fact that almost after every three

years there was a practice of having the service conditions revised by way of settlements and that in view of this practice and the fact that there has

been gap between the last settlement in 1990 and the award, retrospective effect has been granted from 1.1.1994 when the demands were raised.

Moreover during this period the service conditions of medical representatives and field staff employed by the Petitioner have been revised twice.

25. I see no reason to differ with the award of the Tribunal. The Tribunal is vested with the jurisdiction to direct payment with retrospective effect

from the date of the demand. When the financial capacity of the employer is not disputed and considering the totality of circumstances, there is no

reason to set aside the award of the Tribunal on this aspect.

26. In any event, the statement filed by the Petitioner shows that even if the award as it stands were to be implemented the Petitioner would not in

any way be inconvenienced by the burden cast upon it. Profits shown as earned by the Petitioner company would be depleted to Rs.

1,20,00,000/- if the award is implemented. The award of the Tribunal is justified and I see no reason to set it aside.

27. The washing allowance which has been paid to the workmen in the administrative section will be adjusted towards the arrears payable under

the award.

28. Mr. Shaikh, learned Counsel appearing on behalf of the Respondent-Union, submits that the interest should be awarded on the arrears. I see

no reason to accept this prayer as 50% of the arrears has already been paid and the balance amount has been secured by way of bank guarantee.

It is not as if the Petitioner have utilised this amount and, therefore, this prayer for interest is rejected.

29. Rule discharged. No order as to costs.